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No. 07-1

Supreme Court, U.S.
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In The

Supreme Court of the United States

CYNTHIA HARDY,

Petitioner,

v.

REGINALD WILBOURNE,

Respondent.

On Petition For A Writ Of Certiorari To The Arkansas Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Arkansas Supreme Court, affirming the order of the Arkansas Circuit Court for Union County, which dismissed the complaint of the Petitioner for back child support without addressing all issues on appeal, and refusing to grant rehearing, contravened an important principle of federal Constitutional law concerning the Petitioner's right to due process under the 14th Amendment to the United States Constitution, and the Petitioner's due process right to receive a complete decision on the merits in response to her appeal, in such a way that conflicted with decisions of this Honorable United States Supreme Court and the Court of Appeals for the Second and the Tenth Circuits.

Whether the Arkansas Supreme Court, affirming the order of the Arkansas Circuit Court for Union County, which dismissed the complaint by the Petitioner for back child support without addressing all issues on appeal, and refusing to grant rehearing, denied the Petitioner's right to due process under the 14th Amendment to the United States Constitution, and the Petitioner's due process right to receive a complete decision on the merits in response to her appeal, in such a way that conflicted with the principles of federal law established by this Honorable United States Supreme Court and the Court of Appeals for the Fifth Circuit and the Court of Veterans Appeals.

QUESTIONS PRESENTED FOR REVIEW – Continued

Whether the Arkansas Supreme Court, affirming the order of the Arkansas Circuit Court for Union County, which dismissed the complaint by the Petitioner for back child support without addressing all issues on appeal, and refusing to grant rehearing, denied the Petitioner's right to due process under the 14th Amendment to the United States Constitution, and the Petitioner's due process right to receive a complete decision on the merits in response to her appeal on the merits, in such a way that misapplied federal law, which has not been directly addressed by this Honorable United States Supreme Court, but should be.

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The Opinions of the Arkansas Supreme Court filed on June 21, 2007, and on September 6, 2007, and the Arkansas District Court for Union County filed on September 8, 2005, are set forth at Appendix A, Appendix B, and Appendix C. The Arkansas Supreme Court Opinion was published at 370 Ark. 359, ___ S.W.3d ___, 2007 WL 1775698 (June 21, 2007).

STATEMENT OF JURISDICTION

This Honorable United States Supreme Court has general appellate jurisdiction under 28 U.S.C. § 1257 over this matter, as it concerns decisions of the Arkansas Supreme Court entered on June 21, 2007, and on September 6, 2007, which, rejecting the Petitioner's complaint for back child support and refusing to grant rehearing, in violation of the Petitioner's due process rights under the 14th Amendment to the United States Constitution, affirmed the decision of the Arkansas Circuit Court for Union County.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

Fourteenth Amendment to the United States Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law. . . .

Article II, § 13 of the Declaration of Rights to the Arkansas Constitution:

Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase, completely, and without denial, promptly and without delay, conformably to the laws.

Amendment 80, § 11 to the Arkansas Constitution:

There shall be a right of appeal from the Circuit Courts and other rights of appeal as may be provided by Supreme Court rule or by law.

Ark. R. App. P. – Civil 2(a):

An appeal may be taken from a circuit court to the Arkansas Supreme Court from: (1) A final judgment or decree entered by the circuit court;

. . . .

INTRODUCTION

The Petitioner respectfully suggests that her Petition for a Writ of Certiorari to the Arkansas Supreme Court on this matter should be granted, as the Orders of the Arkansas Supreme Court:

Contravened an important principle of federal Constitutional law concerning the Petitioner's right to due process under the 14th Amendment to the United States Constitution, and the Petitioner's due process right to receive a complete decision on the merits in response to her appeal, in such a way that conflicted with decisions of this Honorable United States Supreme Court and the Court of Appeals for the Second and the Tenth Circuits: to wit: *Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 869, 74 L.Ed.2d 675 (1983) (citing *Meachum v. Fano*, 427 U.S. 215, 223-27, 95 S.Ct. 2532, 2537-40, 49 L.Ed.2d 451 (1976)); *Connecticut Board of Pardons v. Dunnschat*, 452 U.S. 458, 101 S.Ct. 2460, 69 L.Ed.2d 158 (1981); *Kentucky Department of Corrections v. Thompson*, 490 U.S. 454, 462, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989) (citing *Olm v. Wakinekona*, 461 U.S. 238, 249, 103 S.Ct. 1741, 1747, 75 L.Ed.2d 813 (1983)); *Erickson v. Pawnee County Board of County Commissioners*, 263 F.3d 1151, 1155 n.5 (10th Cir. 2001); *Cook v. Sheldon*, 41 F.3d 73, 79-80 (2nd Cir. 1994). *See* U.S. S.Ct. R. 10(b);

Denied the Petitioner's right to due process under the 14th Amendment to the United States Constitution, and the Petitioner's due process right to

receive a complete decision on the merits in response to her appeal, in such a way that conflicted with the principles of federal law established by this Honorable United States Supreme Court and the Court of Appeals for the Fifth Circuit and the Court of Veterans Appeals in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 1156, 71 L.Ed.2d 265 (1982) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 2705 n.8, 33 L.Ed.2d 548 (1972)), cited by, *Haitian Refugee Center v. Smith*, 676 F.2d 1023, 1039-40 (5th Cir. 1982) and *Marsh v. West*, 11 Vet. App. 468, 471 (Vet. App. 1998). *See* U.S. S.Ct. R. 10(b) and (c); and

Denied the Petitioner's right to due process under the 14th Amendment to the United States Constitution, and the Petitioner's due process right to receive a complete decision on the merits in response to her appeal, in such a way that misapplied federal law, which has not been directly addressed by this Honorable United States Supreme Court, but should be. *See* U.S. S.Ct. R. 10(c).

STATEMENT OF THE CASE

The Petitioner, Cynthia Hardy (hereinafter "Hardy"), was the mother of C.A.J. (hereinafter "Minor Disabled Child"), who passed away on or about November 21, 2003, when she was struck by a motor vehicle. The Mother subsequently brought a wrongful death action, which was settled, with a

portion of the settlement going to Reginald Wilbourne (hereinafter "Father"). A claim for back child support was not alleged in the wrongful death action.

Hardy had not obtained a court order requiring the Father to pay child support prior to the death of the Minor Disabled Child. On or about June 6, 2006, Hardy brought her Petition for Adjudication of Paternity and Back Child Support & Emergency Motion to Freeze Monies against the Father in the Arkansas Circuit Court for Union County. On or about August 24, 2005, the Arkansas Circuit Court held a hearing on the merits of Hardy's Petition. Hardy's testimony at the hearing provided the following evidence: the Father did not pay any child support, even though Hardy had asked him for it over the years; the Minor Disabled Child had extensive medical problems, to include cerebral palsy, asthma, and a number of surgeries, for which the Father refused to help; at one point, Hardy and her children were living in a shed; and Hardy had unsuccessfully attempted to obtain the help of the Office of Child Support Enforcement to obtain child support for the Minor Disabled Child. The Father had admitted that every man has a duty to pay child support and that Hardy deserved reimbursement for the care and support she gave to the Minor Disabled Child. The Father also testified that the money Hardy received from the wrongful death action was enough for her. Hardy presented to the Arkansas Circuit Court the Arkansas law that the obligation to pay child support existed even without

an order, independent of statute, which supported her claim. *See, e.g.*, *Ford v. Ford*, 347 Ark. 485, 65 S.W.3d 432 (Ark. 2002); *Fonken v. Fonken*, 334 Ark. 637, 976 S.W.2d 952 (Ark. 1998); *Stanley v. Montezuma*, 12 Ark. App. 337, 676 S.W.2d 759 (Ark. App. 1984); *Watkins v. Dudgeon*, 270 Ark. App. 516, 606 S.W.2d 78 (Ark. App. 1980). Hardy also raised the issue, before the Arkansas Circuit Court, that she was entitled to collect the back child support under the theories of restitution, unjust enrichment, or reimbursement, which are recognized causes of action under Arkansas law.

On or about September 8, 2005, the Arkansas Circuit Court entered its order denying Hardy's Petition. *See* Appendix B, App. p. 13. Hardy appealed and presented several issues to the Arkansas Supreme Court, which included the issue of first impression whether a statutory cause of action survived the death of the minor child and whether Hardy had a claim against the Father for all of the support she had provided the Minor Disabled Child during her life under the theories of restitution, unjust enrichment, or reimbursement.

On or about June 21, 2007, the Arkansas Supreme Court denied Hardy's appeal on the issue of whether a statutory cause of action for back child support survives the death of the minor child. *See* Appendix A, App. p. 1. The Opinion of the Arkansas Supreme Court did not address the issue of Hardy's claim under the theories of restitution, unjust enrichment, or reimbursement.

Hardy brought her Petition for Rehearing, specifically raising the issue under, inter alia, the 14th Amendment to the United States Constitution, that Hardy had a due process right to have her appeal heard on the merits and to receive a decision on the issues raised to the Arkansas Supreme Court by her. On or about September 6, 2007, the Arkansas Supreme Court denied Hardy's Petition for Rehearing without issuing a formal opinion. *See* Appendix C, App. p. 17.

STATEMENT OF RAISING ISSUE TO THE ARKANSAS SUPREME COURT

After the Arkansas Supreme Court denied Hardy's appeal, she brought her Petition for Rehearing as the Arkansas Supreme Court failed to address all of the issues she raised on appeal. In her Petition for Rehearing, Hardy raised the issue that she was denied due process under the 14th Amendment to the United States Constitution, by the failure of the Arkansas Supreme Court to address all of the issues she raised on appeal, because she had a state Constitutional right to an appeal with a concurrent federal Constitutional right to have her appeal heard on the merits with all issues addressed, because due process requires that the denial of guaranteed rights under state law violates due process. It was at that point, once the violation occurred, that Hardy timely and properly raised the violation to the attention of the Arkansas Supreme Court. The Arkansas Supreme

Court denied the Petition for Rehearing, thereby denying Hardy her due process rights. Hardy could not have raised the issue any sooner, as it occurred upon the issuance of the Opinion of the Arkansas Supreme Court, denying her appeal.

REASONS FOR GRANTING THE PETITION

The facts are not disputed. Hardy presented an appeal to the Arkansas Supreme Court and the Arkansas Supreme Court did not address the issue on appeal of whether she had a claim under the theories of restitution, unjust enrichment, or reimbursement, which are recognized causes of action under Arkansas law. Hardy then presented the issue on a Petition for Rehearing, which the Arkansas Supreme Court refused to grant.

It is undisputed that Hardy has a state Constitutional right to an appeal under Arkansas law. Ark. Const., Amend. 80, § 11. This is a mandatory right for Arkansas litigants and not a discretionary provision. It is also undisputed that Hardy has a state Constitutional right to a remedy for her grievances. Ark. Const., Art. II, § 13.

Liberty interests arise under both the Due Process Clause and state law, which provide grounds for a cause of action. *Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 869, 74 L.Ed.2d 675 (1983) (citing *Meachum v. Fano*, 427 U.S. 215, 223-27, 95 S.Ct. 2532, 2537-40, 49 L.Ed.2d 451 (1976)); *Connecticut*

Board of Pardons v. Dunnschat, 452 U.S. 458, 101 S.Ct. 2460, 69 L.Ed.2d 158 (1981); *Erickson v. Pawnee County Board of County Commissioners*, 263 F.3d 1151, 1155 n.5 (10th Cir. 2001); *Cook v. Sheldon*, 41 F.3d 73, 79-80 (2nd Cir. 1994). A state creates a protected liberty interest by placing substantive limitations on official discretion, which creates grounds for a cause of action. *Kentucky Department of Corrections v. Thompson*, 490 U.S. 454, 462, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989) (citing *Olm v. Wakinekona*, 461 U.S. 238, 249, 103 S.Ct. 1741, 1747, 75 L.Ed.2d 813 (1983)); *Erickson v. Pawnee County Board of County Commissioners*, 263 F.3d 1151, 1155 n.5 (10th Cir. 2001); *Cook v. Sheldon*, 41 F.3d 73, 79-80 (2nd Cir. 1994). Based on these authorities, Hardy respectfully suggests that she has a fundamental due process right to appeal a decision of the circuit court in Arkansas that was non-discretionary.

It is undisputed that Hardy presented her appeal to the Arkansas Supreme Court, which resulted in an opinion. It is also not disputed that the Arkansas Supreme Court failed to address Hardy's appeal as to whether she had a claim under the theories of restitution, unjust enrichment, or reimbursement. It is also undisputed that the Arkansas Supreme Court denied her Petition for Rehearing when Hardy raised the issue of due process.

An essential part of an appeal is the due process right to receive a decision on the merits of the appeal. *Haitian Refugee Center v. Smith*, 676 F.2d 1023, 1039-40 (5th Cir. 1982) (holding that due process allows a

person to present his case and have its merits fairly judged (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 1156, 71 L.Ed.2d 265 (1982) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 2705 n.8, 33 L.Ed.2d 548 (1972))); *Marsh v. West*, 11 Vet. App. 468, 471 (Vet. App. 1998). *See also M.C.G. v. School Board of Hillsborough County Florida*, 2006 WL 1528872 (M.D. Fla., June 1, 2006); *Zivalich v. Unique Concepts Promotions, Inc.*, 2003 WL 21961391 (Minn. App., Aug. 19, 2003).

As Hardy had a due process right to present her appeal, Hardy also had a due process right to receive a complete decision on the merits. Based on the undisputed facts of this matter, Hardy's right to receive a complete decision on the merits was denied, as the Arkansas Supreme Court did not address the issue of whether she had a claim under the theories of restitution, unjust enrichment, or reimbursement in its Opinion and refused her Petition for Rehearing when she raised the due process issue to the Arkansas Supreme Court.

Hardy respectfully suggests that she has a right to receive a complete decision on the merits of each of her arguments, to include her argument of equitable restitution, unjust enrichment, or reimbursement. To hold otherwise would be to essentially deny Hardy full benefit of her fundamental right to an appeal. *Haitian Refugee Center v. Smith*, 676 F.2d 1023, 1039 (5th Cir. 1982) (stating: "we hold simply that the government violates the fundamental fairness which is the essence of due process when it creates the right to petition and

then makes the exercise of that right utterly impossible.") Indeed, the "right" would become, as Chief Justice Earl Warren warned so many years ago (in another context but still addressing fundamental rights) a mere "form of words", without remedy or redress.[1] *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 1875, 20 L.Ed.2d 889 (1968) (citing *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961)).

All issues raised by Hardy on appeal to the Arkansas Supreme Court should have been addressed. To simply ignore them is to vitiate the right to an appeal. Hardy recognizes that where there is no right to an appeal, it would be discretionary as to whether all issues should be addressed, such as the certiorari procedure before this Honorable United States Supreme Court. However, the difference is that Hardy has a state Constitutional right to appeal, protected by due process, with the concurrent federal due process right to a decision on the merits. A decision which does not address all the issues raised on appeal is simply not a complete decision on the merits. Such decisions eviscerate the right to appeal. Where a state constitutionally grants the right to an appeal, as a matter of due process, the state should not be allowed to ignore it and should be required to fully comply with that right and with all the attendant requirements under due process.

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[1] The Arkansas Constitution does guarantee a remedy for every wrong. Ark. Const., Art. II, § 13.

CONCLUSION

This Petition has significant ramifications concerning due process and for appellate practice in the State of Arkansas. If this Honorable United States Supreme Court accepts Hardy's argument and grants her Petition for a Writ of Certiorari, then future appellants in the State of Arkansas will not be denied their fundamental right to due process on appeal.

Based on the arguments and authorities presented, *supra*, the Petitioner, Cynthia Hardy, respectfully prays that this Honorable United States Supreme Court: GRANTS her Petition for a Writ of Certiorari to the Arkansas Supreme Court; REQUIRES the Arkansas Supreme Court to rule on the issue of whether Hardy had a claim under the theories of restitution, unjust enrichment, or reimbursement; and for any and all additional relief this Honorable United States Supreme Court deems just, fair, and proper.

Respectfully submitted,

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SUPREME COURT OF ARKANSAS
No. 05-1335

CYNTHIA HARDY, APPELLANT, VS. REGINALD WILBOURNE, APPELLEE.	**Opinion Delivered** June 21, 2007 APPEAL FROM THE UNION COUNTY CIRCUIT COURT, NO. DR-2005-0415-2, HON. MICHAEL RICHARD LANDERS, JUDGE, AFFIRMED.

PAUL E. DANIELSON, Associate Justice

Appellant Cynthia Hardy appeals from the circuit court's order denying her petition for adjudication of paternity and back child support, which she filed against appellee Reginald Wilbourne, following the death of their child. Her sole point on appeal is that the circuit court erred in denying the petition. We affirm the circuit court's order.

A review of the record reveals that the minor child at issue, Catrice Allison Johnson, was born to Hardy and Wilbourne on March 25, 1989, and died on November 21, 2003, at the age of fourteen. Following a wrongful-death suit, the Union County Probate Court, in May 2005, approved a settlement by Catrice's estate, in the amount of $500,000, with one-third of the sum being approved for attorney's fees.

That court then distributed the remaining proceeds in the following manner:

60% to Cynthia Hardy, mother

17.5% to W.J., Catrice's half-brother

17.5% to Z.R., Catrice's half-brother

5% to Reginald Wilbourne, father.

In the probate court's order, the probate court outlined its reasoning for rejecting Wilbourne's claim for one-third of the proceeds, saying:

> 3. The claim of Reginald Wilbourne for one-third of the remaining proceeds was not allowed based on the history of his relationship with the decedent. The decedent was conceived and born illegitimately. She was premature and encountered medical difficulties which required her to remain in the hospital for two to four months after birth. Her twin sibling died. Reginald Wilbourne did not visit her in the hospital and did not attend the funeral of the twin. He did not claim paternity or give the child his name. The child suffered from cerebral palsy, yet Reginald Wilbourne did not contribute to her care, maintenance, support, or medical needs. He did not remember her on birthdays or holidays. Reginald Wilbourne was not a factor in the life of decedent and he did not act responsibly. His testimony to the contrary is not credible. However, he did visit the child occasionally and she knew him to be her father, apparently loving him for that fact alone. She was his only child and he has

> grieved over her death. On this basis Reginald Wilbourne is awarded a small part of the proceeds.

On June 6, 2005, Hardy petitioned the circuit court for an adjudication of paternity and back child support.[1] In her petition, Hardy asserted that Wilbourne did not pay any child support during the life of her daughter and that Hardy was responsible for the costs of raising her. She further asserted that, as stated above, the probate court, in a determination of a wrongful-death claim, found that Wilbourne had not paid child support, nor contributed to Catrice's medical care. Hardy stated that during the hearing before the probate court, Wilbourne admitted that if he were to receive a portion of the settlement, he would pay child support. Accordingly, Hardy prayed that the circuit court adjudicate paternity, award her reasonable back child support, freeze the monies due Wilbourne from the wrongful-death suit until the instant matter was resolved, award her reasonable attorney's fees and costs, and award her any and all additional relief available. Wilbourne responded and asserted two affirmative defenses: (1) that the circuit court had no jurisdiction over the probate court's division of the wrongful-death settlement; and (2) that Hardy had never sought court-ordered child support during her daughter's life and that she was equitably estopped from doing so. In addition,

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[1] Hardy further made an emergency motion to freeze monies.

Wilbourne pled laches, unclean hands, accord and satisfaction, and statute of limitations.

On July 8, 2005, the circuit court entered an order in which it found that, based on the evidence presented at a hearing held the day before and the applicable law, it did not have the authority to order Wilbourne's monies held, which were presently on deposit. For that reason, the circuit court denied Hardy's motion to freeze those funds. However, the circuit court did order Wilbourne to comply with a standing order, to which all parties to domestic-relations actions in the Thirteenth Judicial District were subject.[2]

A hearing was then held on August 24, 2005, on the remaining issues before the circuit court. At that time, the circuit court acknowledged the following stipulations by the parties:

> The parties in chambers have stipulated to certain facts. I would like to go ahead and put that on the record at this time. First, that the Defendant is the natural father of the minor child Catrice Allison Johnson, born

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[2] Per the circuit court's order, paragraph three of the standing order provided: "Each party is hereby enjoined and restrained from selling, encumbering, contract[ing] to sell, or otherwise disposing of or removing from the jurisdiction of this Court any of the property belonging to the parties except in the ordinary course of business." The circuit court then found that any monies distributed to Wilbourne were subject to the standing order.

> March 24, 1989, who died November 21, 2003.
>
> Number two, that the Defendant did not pay any – excuse me, that there was no child support action initiated during the life of the child. Number three, the child is deceased which we have already stated. Number four, no Motion for Child Support was – that the Motion for Child Support that is presently pending and is today before the Court was filed after the death of the child. And number five, that the Defendant was in prison for a period of seven years during the life of the child.
>
> . . . .
>
> At least seven years, yes. . . .

In addition, the order of the probate court approving the wrongful-death settlement was received without objection. Following the arguments of counsel and the testimony of the parties, the circuit court gave the parties permission to file posttrial briefs and took the matter under advisement.

On September 8, 2005, the circuit court entered its order denying Hardy's petition for child support. In it, the circuit court recited the distribution of the wrongful-death settlement and noted that Hardy filed her petition subsequent to the probate court's order of distribution. The circuit court found that the testimony had established that neither Hardy, nor anyone on her behalf, had brought an action against Wilbourne for the nonpayment of child support. It

further found that there were no judgments pending for child-support arrearages, nor had paternity of Catrice been established prior to the bringing of Hardy's petition almost two years after Catrice's death.

The order further observed that there was conflicting testimony as to whether Hardy requested child support from Wilbourne during Catrice's life and noted that Wilbourne denied child support was ever requested. The circuit court then recited several statutes relating to child support, including Arkansas Code Annotated §§ 9-14-237(a)(1) (Supp. 2005), 9-14-235 (Repl. 2002), and 9-14-105(b) (Repl. 2002). It then concluded:

> This action was brought following the issuance of an Order of Distribution of Settlement Proceeds related to the unfortunate accident causing the death of the minor child. Said wrongful death action was pursued by plaintiff as special administratrix of the estate of the child. In its decision as to the distribution of said proceeds the Court specifically noted that defendant did not claim the paternity of the child nor did he contribute to the child's care, maintenance, support or medical needs. The nonpayment of child support was obviously a factor the Court considered in its decision to award plaintiff and her two minor children 95% of the total net proceeds of the settlement.
>
> The claim of plaintiff was not initiated during the life of the child and any order

> awarding support would not benefit the child. Plaintiff should not prevail legally or equitably in any action at this time against defendant for back child support and the petition for said support is denied.

Hardy now appeals.

Specifically, Hardy argues that the circuit court erred in denying her petition for child support for two reasons: (1) it erred in finding, as a basis for denying her petition, that the probate court considered the nonpayment of child support in its order of distribution; and (2) that it erred in relying on Hardy's failure to initiate such a petition during the life of the child as a ground for denying the petition. She contends that the probate court did not distribute the settlement proceeds in the manner it did in an attempt to compensate her for Wilbourne's failure to pay child support during Catrice's life and submits that the probate court was without jurisdiction to even consider the issue of child support within the context of the wrongful-death action.[3] In addition, she urges that because she had custody of the child, she was entitled to bring an action for back child support and that such action survives the death of the minor child. She further contends that the obligation of child support, even without an order, survives the

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[3] We note that the decision of the probate court is not before us. Therefore, any arguments made by Hardy, which we construe as challenging the probate court's order, will not be addressed.

death of a child because an action for the collection of back child support is a creature of statute. Finally, she claims that her independent cause of action to collect back child support was not dependent upon whether the minor child was still alive at the time she brought her petition, as it was her individual right to bring suit to collect from Wilbourne for what she had already paid for the care and support of the child. Wilbourne does not respond.

Our standard of review for an appeal from a child-support order is *de novo* and we will not reverse a finding of fact by the circuit court unless it is clearly erroneous. *See Arkansas Office of Child Support Enforcem't v. Parker,* 368 Ark. 393, ___ S.W.3d ___ (2007). In reviewing a circuit court's findings, we give due deference to that court's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony. *See id.* However, a circuit court's conclusion of law is given no deference on appeal. *See id.*

The instant case requires us to determine whether a petition for child support may be initiated after the death of a child. We conclude that it cannot. Arkansas Code Annotated § 9-14-105(b) (Repl. 2002) permits the following to file a petition to require the noncustodial parent or parents of a minor child to provide support for the minor child:

> (1) Any parent having physical custody of a minor child;

> (2) Any other person or agency to whom physical custody of a minor child has been given or relinquished;
>
> (3) A minor child by and through his guardian or next friend; or
>
> (4) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when the parent or person to whom physical custody has been relinquished or awarded is receiving assistance in the form of Aid to Families with Dependent Children, Medicaid, Title IV-E of the Social Security Act – Foster Care, or has contracted with the department for the collection of support.

Ark. Code Ann. § 9-14-105(b) (Repl. 2002). "Minor child," as used in the statute, is defined as "a child less than eighteen (18) years of age[.]"Ark. Code Ann. § 9-14-105(d)(1) (Repl. 2002).

We review issues of statutory construction under a *de novo* standard. *See Cooper Clinic, P.A. v. Barnes*, 366 Ark. 533, ___ S.W.3d ___ (2006). Because it is for this court to decide the meaning of a statute, we are not bound by the circuit court's determination of the statute's meaning. *See id.* The basic rule of statutory construction is to give effect to the intent of the General Assembly. *See id.* The first rule in determining the meaning of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *See id.* This court will construe a statute so that no word is left

void, superfluous or insignificant, with meaning and effect given to every word in the statute if possible. *See id.* When the language of the statute is plain and unambiguous, conveying a clear and definite meaning, we need not resort to the rules of statutory construction. *See id.* A statute is ambiguous only where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning. *See id.*

Here, the plain language of subsection (b)(1) requires that the parent petitioning for an order of child support have physical custody of the child. Because Catrina [sic] was deceased at the time Hardy filed her petition for child support, Hardy was without physical custody of her and was, thus, prohibited from filing a petition for child support. While subsection (e) of section 9-14-105 provides that "[a]ny action filed pursuant to this subchapter may be brought at any time up to and including five (5) years from the date the child reaches the age of eighteen (18) years of age[,]" the language of the subsection clearly presupposes that the child is still living, as the age of the child is the determining factor.

Hardy is correct that we have held that a parent has a legal obligation to support a minor child regardless of the existence of a support order. *See Ford v. Ford,* 347 Ark. 485, 65 S.W.3d 432 (2002). However, while Hardy claims that a cause of action for child support survives the death of a child, a review of our statutes reveals that that is simply not the case.

As the circuit court pointed out in its order, Arkansas Code Annotated § 9-14-237(a)(1)(B)(iii) (Supp. 2005) specifically provides that an obligor's duty to pay child support shall terminate upon the death of the minor child:

> (a)(1) Unless a court order for child support specifically extends child support after these circumstances, an obligor's duty to pay child support for a child shall automatically terminate by operation of law:
>
> . . . .
>
> (B) When the child:
>
> . . . .
>
> (iii) Dies[.]

Ark. Code Ann. § 9-14-237(a)(1)(B)(iii) (Supp. 2005).[4] Thus, the plain language of the statute dictates that

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[4] This statute was amended by the General Assembly in 2007; however, subsection (a)(1)(B)(iii) remains unchanged. *See* Act 337 of 2007, § 1. In addition, we observe, as the circuit court did, that the statutes do not preclude the payment of child-support arrearages or judgments in existence *at the time* of the child's death. *See* Ark. Code Ann. § 9-14-235 (Repl. 2002) (specifically providing that "[i]f a child support arrearage or judgment exists at the time when all children entitled to support reach majority, are emancipated, or die, or when the obligor's current duty to pay child support otherwise ceases, the obligor shall continue to pay an amount equal to the court-ordered child support . . . until such time as the child support arrearage or judgment has been satisfied."); Ark. Code Ann. § 9-14-237(a)(2) (Supp. 2005) ("Provided, however, that any unpaid child support obligations owed under a judgment or in arrearage pursuant to a child support order shall be satisfied pursuant to § 9-14-235.").

even were Hardy permitted to file a petition for retroactive child support, which she was not under section 9-14-105(b), Wilbourne's obligation to pay child support for Catrice terminated by operation of law upon Catrice's death. Accordingly, we hold that the circuit court did not err in denying Hardy's petition for child support, despite any language referencing the probate court's order. *See, e.g., Alphin v. Alphin,* 364 Ark. 332, 219 S.W.3d 160 (2005) (providing that this court can affirm the circuit court for reaching the right result, even if it announced a wrong reason).

Affirmed.

IN THE CIRCUIT COURT OF
UNION COUNTY, ARKANSAS
DOMESTIC RELATIONS DIVISION
SECOND DIVISION

CYNTHIA HARDY **PLAINTIFF**

VS. **NO. DR-2005-0415-2**

REGINALD WILBOURNE **DEFENDANT**

ORDER

(Filed Sep. 8, 2005)

NOW ON this 24th day of August, 2005, comes before the Court the Petition for Adjudication of Paternity and Back Child Support by plaintiff, Cynthia Hardy, who appears in person and with counsel. William C. Plouffe, Jr.; defendant, Reginald Wilbourne appears in person and with counsel, Robin Carroll and from the pleadings flied herein, arguments of counsel, testimony of plaintiff and all other matters and things before the Court, the Court finds:

Plaintiff and defendant are natural parents of a minor child, Catrice Allison Johnson, born March 24, 1989 who died November 21, 2003. Defendant, as special administratrix of the deceased child's estate settled a wrongful death claim in connection with her death: said case styled "In the Matter of the Estate of Catrice Allison Johnson, Deceased, Circuit Court Union County. Arkansas Probate Division, Sixth Division No. PR-2004-196-6". The total amount of the settlement was $500,000.00.

Following a hearing on the distribution of net proceeds in that case, the Court by order dated May 31, 2005 determined that 60% of the net settlement was to be awarded to plaintiff, 17.5% of the settlement each to two half-brothers surviving the child and remaining 5% to defendant father. Plaintiff filed this action subsequent to the entry of the order of distribution.

Parties have stipulated that defendant is the natural father of the minor child and that he has not paid any child support for the support of that child. Testimony has established that neither plaintiff nor anyone in her behalf has ever brought any action as against this defendant/father for nonpayment of child support. There are no judgments pending for child support arrearages and paternity of the minor child had not been established prior to the bringing of this action almost two years following the date of the death of the minor child.

There is conflicting testimony as to whether plaintiff did during the life of the child request child support to be paid by defendant. The defendant denies child support was ever requested.

An obligor's duty to pay child support for a child automatically terminates by operation of law when the child reaches eighteen years of age or should have graduated from high school, whichever is later or when the child is emancipated by a court of competent jurisdiction, marries or dies, unless the court order for child support specifically extends child

support after such circumstances. A.C.A. § 9-14-237(a)(1).

The exception to this rule is that any unpaid child support obligations owed under a judgment or in arrearage pursuant to a child support order shall be satisfied pursuant to A.C.A. § 9-14-235.

A.C.A. § 9-14-105(b) establishes who has standing to file a petition for child support. The plaintiff does not have physical custody of the minor child in that this child was deceased approximately two years prior to the bringing of this action or any other action to establish paternity or a child support obligation of defendant.

This action was brought following the issuance of an Order of Distribution of Settlement Proceeds related to the unfortunate accident causing the death of the minor child. Said wrongful death action was pursued by plaintiff as special administratrix of the estate of the child. In its decision as to the distribution of said proceeds the Court specifically noted that defendant did not claim the paternity of the child nor did he contribute to the child's care, maintenance, support or medical needs. The nonpayment of child support was obviously a factor the Court considered in its decision to award plaintiff and her two minor children 95% of the total net proceeds of the settlement.

The claim of plaintiff was not initiated during the life of the child and any order awarding support would not benefit the child. Plaintiff should not

prevail legally or equitably in any action filed at this time against defendant for back child support and the petition for said support is denied.

IT IS SO ORDERED.

/s/ Michael R. Landers
MICHAEL R. LANDERS
CIRCUIT JUDGE

Date: September 8, 2005

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

Leslie W. Steen
Clerk

September 6, 2007

William C. Plouffe, Jr.
Attorney at Law
211 N. Washington Street
El Dorado, AR 71731

RE: 05-1335. Cynthia Hardy v. Reginald Wilbourne

Dear Mr. Plouffe:

The Arkansas Supreme Court made the following order today in the above styled case:

"Petition for rehearing is denied."

Sincerely,

/s/ Leslie W. Steen
Leslie W. Steen, Clerk

LWS:jko

cc: Reginald Wilbourne
Cheryl C. Wilson, Clerk
(DR-05-415-2)